

## Resource Legislation Amendments 2017

### RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 9

# Changes to resource consent notification

This is part of a series of 16 fact sheets that give an overview of recent resource legislation amendments.

This fact sheet outlines the changes to council decisions on whether to notify resource consent applications under the Resource Management Act 1991 (RMA).

**Previously** consent authorities had to, in most cases, do a comprehensive effects-based assessment to determine whether to notify a resource consent application (either publicly or on a limited basis). This is no longer always the case.

The RMA has been amended to:

- replace the previous public and limited notification assessment processes for resource consent applications with a new step-by-step process (described below)
- remove the general discretion for councils to publicly notify resource consent applications
- introduce some new preclusions on public and limited notification, primarily for housing-related resource consents
- introduce a 10-working-day timeframe for councils to make notification decisions on fast-track applications.

**The intent of these changes is to:**

- increase certainty about whether consent applications lodged with councils will be notified
- reduce the time (and associated costs) to make notification decisions
- reduce risk of council decisions on consent notification being judicially reviewed
- speed up the processing of housing-related resource consents.

Consent authorities are still required to undertake comprehensive effects-based assessments when making substantive decisions on resource consent applications; see Fact Sheet 10 for information about changes to substantive consent decisions.

The statutory tests to determine whether to give public or limited notification of a notice of requirement for a designation and notice of requirement for a heritage order are unchanged. Because of the amendments made to sections 95A to 95E, however, they have been moved to sections 149ZCB to 149ZCF in Part 6AA of the Act. Sections 168A, 169, 189A and 190 in Part 8 of the Act detail how sections 149ZCB to 149ZCF are to be modified and applied to designations and heritage orders.

These changes come into force on 18 October 2017.

# The process for councils to determine whether to publicly notify applications has changed

There have been a number of changes to the process for determining public notification, including some new preclusions on public notification. The step-by-step process for determining public notification under section 95A is:

<b>Step 1</b>	<p>Mandatory public notification in certain circumstances.</p> <p>An application must be publicly notified if:</p> <ul style="list-style-type: none"> <li>• the applicant requests public notification</li> <li>• public notification is required under section 95C</li> <li>• the application is made jointly with an application to exchange recreation reserve land (if this applies, see Fact Sheet 12 for more information).</li> </ul>
<b>Step 2</b>	<p>If not required by step 1, public notification is precluded in certain circumstances.</p> <p>An application cannot be publicly notified if:</p> <ul style="list-style-type: none"> <li>• a rule or national environmental standard (NES) precludes notification</li> <li>• the application is for one or more of the following, but no other, activities: <ul style="list-style-type: none"> <li>– a controlled activity</li> <li>– a restricted-discretionary or discretionary application for: <ul style="list-style-type: none"> <li>○ a subdivision of land</li> <li>○ a residential activity (defined in new section 95A(6))</li> </ul> </li> <li>– a boundary activity (defined in section 87AAB; see Fact Sheet 8 if this applies)</li> <li>– an activity prescribed in regulations.</li> </ul> </li> </ul> <p>If the application is for multiple activities, public notification is only precluded for the application as a whole if each individual activity is precluded from public notification.</p> <p>If public notification is precluded under this step, then step 3 doesn't apply but consideration under step 4 is required (special circumstances).</p>
<b>Step 3</b>	<p>If not precluded by step 2, public notification is required in certain circumstances.</p> <p>Other than for those activities in step 2, public notification is required if:</p> <ul style="list-style-type: none"> <li>• a rule or NES requires public notification</li> <li>• the assessment under section 95D determines that the activity will have, or is likely to have, adverse effects on the environment that are more than minor.</li> </ul> <p>If the application is for multiple activities, and any part of that application meets either of the above criteria, the application must be publicly notified in its entirety.</p>
<b>Step 4</b>	<p>Public notification in special circumstances</p> <p>If notification is precluded under step 2, or isn't required under step 3, consideration must be given to whether special circumstances exist that warrant public notification of the application. The presumption for special circumstances has changed so that, if the consent authority determines special circumstances exist, the council <i>must</i> notify the application (it is not discretionary).</p>

If the application is not publicly notified, the consent authority determines if limited notification is required under section 95B.

## The process for councils to determine whether to give limited notification of an application has changed

There have been some changes to the process for determining limited notification, including some new preclusions on limited notification. In most cases, however, the current test for assessing whether an activity's adverse effects on a person are minor or more than minor remains largely unchanged. The step-by-step process for determining limited notification is:

<b>Step 1</b>	<p>Certain affected groups and affected persons must be notified.</p> <p>If the consent authority determines that certain people or groups are affected, these persons/groups must be given limited notification::</p> <ul style="list-style-type: none"> <li>• affected protected customary rights groups</li> <li>• affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity)</li> <li>• an affected person under section 95E to whom a statutory acknowledgement is made (if the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement)</li> </ul>
<b>Step 2</b>	<p>If not required by step 1, limited notification is precluded in certain circumstances.</p> <p>An application cannot be limited notified if:</p> <ul style="list-style-type: none"> <li>• a rule or NES precludes limited notification of the application</li> <li>• it is for either or both of the following, but no other, activities: <ul style="list-style-type: none"> <li>– a controlled land use activity under a district plan</li> <li>– an activity prescribed through regulations.</li> </ul> </li> </ul> <p>If the application is for multiple activities, limited notification is only precluded for the application as a whole if each individual activity is precluded from limited notification.</p> <p>If limited notification is precluded under this step, then step 3 doesn't apply but consideration under step 4 is required.</p>
<b>Step 3</b>	<p>If not precluded by step 2, certain other affected persons must be notified.</p> <p>Except for boundary activities and any activities prescribed under the regulations relating to notification of consent applications (section 360G(1)(b)), the consent authority must notify any other person they determine to be affected under section 95E.</p> <p>For boundary activities, only those persons whose written approval would have been required under new section 87BA are eligible to be notified. These eligible persons must be notified if they are determined to be affected persons under section 95E.</p> <p>For activities prescribed in regulations made under section 360G(1)(b), limited notification can only be served on persons specified as being eligible to be affected. These eligible persons must be notified if they are determined to be affected persons under section 95E.</p>
<b>Step 4</b>	<p>Further notification in special circumstances.</p> <p>The determination of special circumstances is new to limited notification. If the consent authority determines special circumstances exist that warrant limited notification of the application to any other persons not already determined to be eligible for limited notification (excluding persons assessed under section 95E as not being affected persons), the council must give limited notification to those persons (it is not discretionary).</p>

If the consent authority does not give public or limited notification of an application under the new stepped process, the application can proceed on a non-notified basis.

## Fact sheets in this series

This is one of a series of 16 fact sheets providing an overview of amendments to the:

- Resource Management Act 1991
- Conservation Act 1987
- Reserves Act 1977
- Public Works Act 1981
- Environmental Protection Authority Act 2011
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The full set of fact sheets is available on our website:

[www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series](http://www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series)

## Find out more

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